

TENTATIVE RULINGS for CIVIL LAW and MOTION

August 19, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: Arch Insurance Company v. Alliance Roofing, Inc. et al.
Case No. CV CV 09-2084

Hearing Date: August 19, 2010 Department Fifteen 9:00 a.m.

Defendant Lawson Mechanical Contractors' demurrer to the complaint is **OVERRULED**. (Code Civ. Proc., § 430.10.) As the Court issued a tentative ruling in the related action McCarthy Building Companies, Inc. v. Alliance Roofing et al. Yolo Superior Court case number CV 09-531, granting the motion to consolidate the subject lawsuits, there will be only one matter, which will include all the necessary parties, left pending before this Court.

Lawson Mechanical Contractors' request for judicial notice is **GRANTED**. (Evid. Code, § 452.) When ruling on a demurrer, the Court may take judicial notice of the existence of a document in the Court's file in other judicial proceedings, but it cannot take judicial notice of the truth of the factual matters asserted therein. (*Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: DFL, Ltd., LP v. Sacramento Regional County Sanitation Dist.
Case No. CV CV 10-452

Hearing Date: August 19, 2010 Department Fifteen 9:00 a.m.

Defendant Sacramento Regional County Sanitation District's ("District") demurrer to the entire complaint is **SUTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e); *Merry v. Coast Community College Dist.* (1979) 97 Cal.App.3d 214, 221; *Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 551.) In this lawsuit, "Plaintiff seeks to quiet title to the property against the claims of all Defendants. Plaintiff seeks to quiet title to the District's interest in the property and establish that the District has an easement interest and not a fee interest in the property. Plaintiff seeks to quiet title as of March 27, 2008, the date the grant

deed conveying the property to Plaintiff was recorded.” (Complaint ¶¶ 1-17.) The issue of whether the District acquired a fee interest was previously determined by the Court and a final judgment was entered in the eminent domain proceeding, Sacramento Regional County Sanitation District v. Nor-Cal Beverage Co., Inc., Yolo Superior Court case number ED 04-0403. The Stipulation for Judgment in Condemnation, (referred to in the Final Condemnation Order, recorded on February 22, 2008), clearly states that the District acquired a fee interest in the property.

The issue of whether Plaintiff was a bona fide purchaser with no notice of the District’s fee interest in the property was also decided in the eminent domain proceeding. In its opposition to the motion to clarify the ambiguity in the final order of condemnation nunc pro tunc, Plaintiff admitted that it had notice of the eminent domain proceeding and the Final Condemnation Order prior to purchasing the property. However, Plaintiff argued that because it is a bona fide purchaser of the real property at issue with no notice of the claimed fee interest, Plaintiff’s motion to clarify the ambiguity in the final order of condemnation nunc pro tunc should be denied as moot and uncorrectable. The Court, having considered all arguments in support of an in opposition to the motion, granted the motion to clarify the ambiguity in the final order of condemnation nunc pro tunc.

Defendant’s request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

**Case: McCarthy Building Companies, Inc. v. Alliance Roofing, Inc. et al.
Case No. CV CV 09-531**

Hearing Date: August 19, 2010 Department Fifteen 9:00 a.m.

St. Paul Fire & Marine Insurance Company’s motion to consolidate this action with St. Paul Fire & Marine Insurance Co. v. NIC Insurance Company, et al. Yolo Superior Court case number CV 09-1450 and Arch Insurance Company v. Alliance Roofing, Inc. et al., Yolo Superior Court case number CV 09-2084, with McCarthy Building Companies, Inc. v. Alliance Roofing, Inc. et al., selected as the lead case is **GRANTED**. (Code Civ. Proc., § 1048.) The Court finds that the subject actions pending before this Court involve common questions of law and fact and consolidation of the actions will avoid unnecessary costs or delay and inconsistent rulings.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Meddock v. County of Yolo et al.**
Case No. CV PO 10-173

Hearing Date: **August 19, 2010** **Department Fifteen** **9:00 a.m.**

Defendant County of Yolo's request for judicial notice is **DENIED**. For purposes of defendant's demurrer, the proper name for the parking lot where the incident occurred makes no difference. The relevant fact is that the incident occurred in a parking lot on public property. In ruling on a demurrer, it is not proper for the court to take notice of factual matters shown on a government claim filed by the plaintiff where such claim was not attached to the complaint. (*Mohlmann v. City of Burbank* (1986) 179 Cal.App.3d 1037, 1041, fn. 2.)

The demurrer based on Government Code section 831.2 is **OVERRULED**. None of the cited cases involve the same facts present in this case, i.e., a plaintiff injured by a natural condition of unimproved public property while he/she was on an improved portion of the public property. Case law suggests, however, that Government Code section 831.2 applies only where plaintiff was injured by a natural condition of unimproved public property, and the injury occurred on unimproved public property. (*Milligan v. City of Laguna Beach* (1983) 34 Cal.3d 829; *County of Sacramento v. Superior Court of Sacramento County* (1979) 89 Cal.App.3d 215, 218; *Mercer v. State of Calif.* (1987) 197 Cal.App.3d 158, 165.) Defendant concedes that the parking lot, where the alleged injury occurred, is not an "unimproved public property."

In enacting section 831.2, the Legislature was concerned with the use of unimproved public property in its natural condition. (Senate Legislative Committee comments to Government Code section 831.2.) The facts alleged in the first amended complaint do not show that Dwight Meddock was using unimproved public property in its natural condition at the time of the alleged incident. It has not been shown that applying Government Code section 831.2 to this case would serve the public policy behind that statute.

The demurrer based on Government Code section 831.7 is **OVERRULED**. The first amended complaint does not allege facts to show that Dwight Meddock was preparing to launch his boat at the time he was injured.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **St. Paul Fire & Marine Insurance Company v. NIC
Insurance Company
Case No. CV CV 09-1450**

Hearing Date: **August 19, 2010** **Department Fifteen** **9:00 a.m.**

Motion to Amend Complaint:

St. Paul Fire & Marine Insurance Company's unopposed motion for leave to file a first amended complaint is **GRANTED**. (Code Civ. Proc., § 473.) Plaintiff is to file the first amended complaint by August 20, 2010.

Demurrer to Complaint:

Defendant Lawson Mechanical Contractor's demurrer to the complaint filed by St. Paul Fire & Marine Insurance Company is **MOOT**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.